IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE-CIVIL

WRIT PETITION NO.1169 OF 2002
WITH
CIVIL APPLICATION NO.1192/2002
IN
WRIT PETITION NO.1169/2002

Maharashtra Jeevan Pradhikaran
through its Superintendent Engineer
having its office at Sadhu Vashvani
Marg, Bhularam Colony,Nashik ... Petitioner.

Versus

1. State of Maharashtra

2. The Special Land Acquisition
Officer, National Highway Project
Nashik.

3. Malegaon Municipal Corporation
Malegaon. ... Respondents.

WITH
WRIT PETITION NO.4377/2003
WITH
WRIT PETITION NO. 5064/2003
WITH
WRIT PETITION NO. 5065/2003
WITH
WRIT PETITION NO.5066/2003
WITH
WRIT PETITION NO. 5067/2003
WITH
WRIT PETITION No.5068/2003

Malegaon Municipal Corporation
Through its Commissioner having
its office at Malegaon, district-
Nasik .... Petitioner.

Versus

1. The State of Maharashtra

2. The Special Land Acquisition Officer
National Highway Project,Nasik.

3.Maharashtra Jeevan Pradhikaran
Through its Superitending Engineer,
having its registered office at
Sadhu Wasvani Marg, Bholaram Colony,
Nashik.

4. The Executive Engineer
Environment Engg.Division, Malegaon

5. Subhash Manikrao Hire
Age adult, Occu: agriculture,
resident of Hire Lane, Shaniwar ward,
Malegaon,district-Nasik. .... Respondents.

WITH
CIVIL APPLICATION NO.141/2005
IN
Writ Petition No. 5068/2003

1. Maharashtra Jeevan Pradhikaran
through its Superintending Engineer
having its registered office at
Sadu Waswani marg,Bholaram Colony,
Nasik.

2. The Executive Engineer,
Environment Engineering division,
Malegaon. ... Applicants.

Versus

1. State of Maharashtra

2. Special Land Acquisition officer,
National Highway project, Nashik.

3. Malegaon Municipal Corporation
through its Commissioner having
its office at Malegaon district
Nashik.

4. Sulchadeo Budha Choudhari
Age-adult

5. Sojabai Punjaram Choudhari

Age-adult

6. Kamalabai Nathu Choudhari
Age-adult
(occupation of Nos.4 to 6 are
agriculture, residents of
Guroar ward, House no.42,
Chandapuri Gate, Malegaon,
district-Nashik)

(Respondent Nos. 5 and 6 through
their General Power of Attorney
Holder respondent no.5 abovenamed.) ..... Respondents.

WITH
WRIT PETITION NO.5069 OF 2003

Malegaon municipal Corporation
Through its Commissioner having its
office at Malegaon District-Nasik .... Petitioner.

Versus

1.The State of Maharashtra

2. The Special Land Acquisition
Officer, National Highway Project,
Nasik.

3. Maharahstra Jeevan Pradhikaran
Through its Superintending Engineer
having its Registered office at
Sadu Waswani Marg,Bholaram Colony,
Nasik.

4. The Executive Engineer
Environment Engg. Division, Malegoan.

5. Hiraman Dharma Hire
Age-adult, Occu: Agriculture
resident of Hire Lane,Malegaon,
district Nasik .... Respondents.

WITH
WRIT PETITION NO.5070 OF 2003

Malegaon municipal Corporation

Through its Commissioner having its
office at Malegaon District-Nasik .... Petitioner.

Versus

1.The State of Maharashtra

2. The Special Land Acquisition
Officer, National Highway Project,
Nasik.

3. Maharahstra Jeevan Pradhikaran
Through its Superintending Engineer
having its Registered office at
Sadu Waswani Marg,Bholaram Colony,
Nasik.

4. The Executive Engineer
Environment Engg. Division, Malegoan.

5. Smt.Sindhubai Vinayak Choudhari

6. Shri Sunil Vinayak Choudhari

7. Shri Vinayak Chindha Chuodhari
(Nos. 5 to 7 adults,occu: Agriculture
residents of Shanwar Ward,
Chandranpuri Gate, Malegaon,district-
Nasik .... Respondents

WITH

CIVIL APPLICATION NO.142/2005
IN
WRIT PETITION NO.5064/2003

1. Maharashtra Jeevan Pradhikaran
Through its Superintending Engineer
having its registered office at Sadu
Waswani Marg,Bholaram Colony, Nashik.

2. Executive Engineer
Environment Engg.Division,Malegaon ... Applicants.

Versus

1. The State of Maharashtra

2. The Special Land Acquisition Officer,

National Highway, Project,Nasik

3. Malegaon Municipal Corporation
Through its commissioner havign its
office at Malegaon District-Nasik.

4. Punjaram Bhilaji Chaudhari

5. Tukaram Bhilaji Chaudhari

6. Narmadabai @ Bhagubai Motiram
Chaudhari

7. Bhagubai Sonu Choudhari

8. Rukminibai Nimba Chaudhari

9. Yamunabai Tolaram Mahde
(Nos. 4 to 9, adults, residents
of Vrindavan Chowk, Malegaon,
District-Nasik) ..... Respondents.

WITH

CIVIL APPLICATION NO.143/2005
IN
WRIT PETITION NO. 5070/03

1. Maharashtra Jeevan Pradhikaran
through its Superintending Engineer
having its registered office at
Sadu Waswani Marg, Bholaram Colony,
Nasik

2. The Executive Engineer
Environment Engg.Division,Malegaon..... Applicants.

Versus

1. State of Maharashtra

2. Special Land Acquisition Officer,
National Highway Project,Nasik

3. Malegaon Municipal Corporation
through its Commissioner having
its office at Malegaon,Dist-Nasik

4. Smt.Sindhabai Vinayak Choudhari

5. Shri Sunil Vinayak Choudhari

6. Shri Vinayak Chindha Choudhari
(Nos. 4 to 6 adults,occ:agriculture
residents of Shanwar Ward,Chandanpuri
Gate,Malegaon,Dist-Nasik) .....Respondents.

WITH

CIVIL APPLICATION NO.144/2005
IN
WRIT PETITION NO. 5069/2003

1.Maharashtra Jeevan Pradhikaran
Through its Superintending Engineer
haivng its registered office at Sadu
Waswani Marg, Bholaram Colony Nasik

2. The Executive Engineer
Environment Engg Division,Malegaon .... Applicants.

Versus

1. State of Maharashtra

2. The Special Land Acquisition Officer,
National Hgihway Project,Nasik

3. Malegaon Municipal Corporation
through its Commissioner having
its office at Malegaon,Dist-Nasik

4. Hiraman Dharma Hire
age-adult,Occ:agriculture,
resident of Hire Lane, Shaniwar Ward,
Malegaon,Nasik ....Respondents.

WITH

CIVIL APPLICATION NO.146 OF 2005
IN
WRIT PETITION NO.4377 OF 2003

1.Maharashtra Jeevan Pradhikaran
through its Superintending Engineer
having its registered office at Sadu
Waswani Marg, Bholaram Colony, Nasik

2. The Executive Engineer
Environment Engg Division, Malegaon. .... Applicants.

Versus

1. State of Maharashtra

2. Special Land Acquisition Officer,
National Highway Project,Nasik

3. Malegaon Municipal Corporation
throgh its Commissioner having its
office at Malegaon,dist-Nasik

4. Subhash Manikrao Hire
age:adult, Occ:Agriculture
resident of Hire Lane,
Shaniwar Ward, Malegaon,Nasik ..... Respondents.

WITH

CIVIL APPLICATION NO.380 OF 2004
IN
WRIT PETITION NO.5065/2003

1.Maharashtra Jeevan Pradhikaran
through its Superintending Engineer
having its registered office at Sadu
Waswani Marg, Bholaram Colony, Nasik

2. The Executive Engineer
Environment Engg Division, Malegaon. .... Applicants.

Versus

1. State of Maharashtra

2. Special Land Acquisition Officer,
National Highway Project,Nasik

3. Malegaon Municipal Corporation
throgh its Commissioner having its
office at Malegaon,dist-Nasik

4. Hiranan Chindu Patil
age-adult; occ: agriculture
resident of Vrindavan chowk
Malegaon,Nasik ..... Respondents

WITH

CIVIL APPLICATION NO.381 OF 2004
IN
WRIT PETITION NO.5067 OF 2003

1.Maharashtra Jeevan Pradhikaran
through its Superintending Engineer
having its registered office at Sadu
Waswani Marg, Bholaram Colony, Nasik

2. The Executive Engineer
Environment Engg Division, Malegaon. .... Applicants.

Versus

1. State of Maharashtra

2. Special Land Acquisition Officer,
National Highway Project,Nasik

3. Malegaon Municipal Corporation
throgh its Commissioner having its
office at Malegaon,dist-Nasik

4. Hiraman Dharma Hire

5. Yamunabai Dharma Hire
(Nos. 4 and 5 both adults,
occu:agriculture, residing
at Hire Lane, Malegaon,Nasik,
through General Power of Attorney
Holder i.e.respondent no.4) ..... Respondents.

WITH

CIVIL APPLICATION NO.382/2004
IN
WRIT PETITION NO.5066/2003

1.Maharashtra Jeevan Pradhikaran
through its Superintending Engineer
having its registered office at Sadu
Waswani Marg, Bholaram Colony, Nasik

2. The Executive Engineer
Environment Engg Division, Malegaon. .... Applicants.

Versus

1. State of Maharashtra

2. Special Land Acquisition Officer,
National Highway Project,Nasik

3. Malegaon Municipal Corporation
throgh its Commissioner having its
office at Malegaon,dist-Nasik

4. Pandurang Bhika Hire,
age-adult,Occ: agriculture
resident of hira Galli,
Shaniwar Ward,house no.368,
Malegaon,Tal-Malegaon,Nasik ..... Respondents.

Smt.Neeta Karnik for petitioner in Writ Petition No.1169/2002, for applicant in C.A.1192/2002 for respondnet No. 3 in W.P.4377/2003, WP 5064/2003, 5065/2003, 5066/2003, 5067/2003 to 5070/2003 and for applicants in CA No.141/2005 to CA 144/2005, 146/2005, CA No.380/2004 to 382/2004.

Mr.S.M.Sabrad for respondent no.3 in WP 1169/2002 , for petitioner in WP 4377/2003, WP 5064/2003 to 5070/2003.

Mr. V.S.Gokhale, AGP for respondent Nos. 1 and 2, State of Maharashtra in all above petitions and applications.

CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.
DATE :15th September 2005.

-ORAL JUDGEMENT (PER V.M.KANADE,J)-

1. The petitioner in Writ Petition No.1169 of 2002 is a statutory Corporation which is established under the provisions of Maharashtra Jeevan Authority Act 1976. It has been established for the purpose of rapid development and proper regulation of water supply and sewerage services in the State of Maharashtra. The Petitioners by these petition is seeking appropriate writ and direction under Article 226 of the Constitution of India quashing the directions issued by the State of Maharashtra in its letter dated 8.10.2001 whereby the petitioner was directed to deposit an amount of approximately Rs.6,82,42,000/- in the District Court Nasik and further for orders of injunction restraining the respondent No.1 from demanding enhanced compensation in the land acquisition references which was pending in District Court. The petitioner is also seeking declaration that petitioner is not the acquiring body under the Land Acquisition Act in respect of lands which were acquired in the land reference cases which were pending in the district Court Nasik. This petition was admitted by this court on 5th March 2002 and interim relief in prayer clause (b) was granted whereby direction issued by respondent No.2 in its impugned letter was stayed and further respondent no. 2 was restrained from demanding enhanced compensation awarded in land reference cases.

2. Brief facts which are relevant for the purpose of deciding these group of matters are stated hereinbelow.

The petitioner is a Corporation which is established under Section 3 of the Maharashtra Jeevan Authority Act 1976 (referred to as the said Act of 1976). The said Act was passed and the intention of the Government in passing the said Act is reflected in the preamble which lays down that since it was essential to provide rapid development and proper regulation of water supply and sewerage services in the State of Maharashtra, it was necessary to provide for the establishment of the Corporation. Respondent no. 3 Malegaon Municipal Corporation has passed various resolutions in which they had resolved to provide for an underground sewerage projects and other work which is reflected from various resolutions which are annexed to this petition. Necessary sanction was also granted by the State of Maharashtra to the said projects. In order to complete the said work, it was essential to acquire the lands of the residents of Malegaon and adjoining areas. Accordingly acquisition proceedings were initiated by Special Land Acquisition Officer. Notices were issued under section 4 of the Land Acquisition Act. Thereafter

inquiry under Section 5 was completed and subsequently declaration under section 6 of the Land Acquisition Act was issued. It is an admitted position that in these notifications and in the award which was ultimately passed, the acquiring body was shown as the Petitioner Corporation. It is further admitted that at that stage no objection was raised by the petitioner herein of their names being shown as acquiring body. Finally in those proceedings awards were passed by the Special Land Acquisition Officer and compensation was awarded to the persons who owned the land. Further thereafter, application under section 18 of the Land Acquisition Act was filed in the district court. In land reference cases also the petitioner was made a party and the market value of the land which was fixed by the Special Land Acquisition Officer was enhanced by the Land reference awards. In these cases Government Pleader represented the petitioner as well as the State of Maharashtra. It is, however, the contention of the petitioner herein that they were not aware about the said proceedings. Though they were shown to be represented by the Government Pleader. After the amount was enhanced in the Land reference award, first appeal was filed in this court by the State of Maharashtra and cross objections were filed by the claimants. In view of award passed by the Special

Land Acquisition Officer and on account of enhanced compensation award by the land reference court, the State of Maharashtra issued a letter dated 8.10.2001 directing the petitioner to deposit the entire amount in the court. Being aggrieved by the said direction which was given by the State of Maharashtra, the petitioner in Writ Petition no.1169 of 2002 has approached this Court seeking the aforesaid directions.

3. The principal grievance of the petitioner in this case is that the petitioner is merely an expert agency which executes work of respondent no.3 as per the directions given by the State of Maharashtra and therefore, it is not the acquiring body under the said land acquisition cases. The grievance of the petitioner is that the entire work was executed for and on behalf of respondent no.3 Malegaon Municipal Corporation and the entire cost has to be borne by respondent no.3 and or by the State of Maharashtra.

4. In Writ Petition No.4377/2003 Malegaon Municipal Corporation is seeking direction from this Court under Article 226 of the Constitution of India for quashing land reference cases, primarily on the ground that though Malegaon Municipal Corporation is the acquiring

body, it was not made party by the claimants in the land reference cases which was filed in the district court and therefore, the said award passed by land reference court is liable to be quashed and set aside and the matter should be remanded to the district court with direction to decide the land reference cases after impleading Malegaon Municipal Corporation as a party respondent and to decide the case after giving an opportunity to the petitioner-Malegaon Municipal Corporation. In this petition, the Maharashtra Jeevan Pradhikaran i.e. the petitioner in Writ Petition No.1169 of 2002 has filed Civil Application No.146 of 2005 for being impleaded as party respondent in the said Writ petition No. 4377/203. Since number of land reference cases were filed in the district court, the petitioner Malegaon Municipal Corporation was directed by this court to file separate writ petitions in each of the land reference award which was passed by the district court and accordingly the other petitions Nos. 4377 of 2003 , 5064 of 2003 to 5070 of 2003 were filed. In these petitions also Civil Applications have been field by the Maharashtra Jeevan Pradhikaran for being impleaded as party respondent. In these writ petitions Malegaon Municipal Corporation has made specific averments that it is the acquiring body in the construction of plants for treatment of sewerage

water discharge from the drains of Malegaon town. The entire petition proceeds on the footing that the Malegaon Municipal Corporation is the acquiring body. Therefore, there is a specific admission on the part of Malegaon Municipal Corporation that it is the acquiring body and therefore, it ought to have been impleaded as defendant in land reference cases which was filed by the claimants in Nasik district court.

5. Similarly number of First Appeals being First Appeal No.128 of 2001 to First Appeal No.135 of 2001 are pending in this court which are filed by the State of Maharashtra challenging the award passed by district court . Cross objections filed by the claimants are also pending.

6. Short question which falls for consideration before this court is whether the petitioner in Writ Petition No.1169 of 2002 is the acquiring body in respect of acquisitions of land which had taken place for construction of sewerage project undertaken by the petitioner therein.

7. The second question which falls for consideration is whether, the Malegaon Municipal Corporation if it is

held to be an acquiring body, in this acquisition was a necessary party in land reference cases, which was filed by the claimants in the District Court?

8. Without going into the question as to whether Maharashtra Jeevan Pradhikaran Authority, Petitioner in Writ Petition No.1169 of 2002 is authorised to carry out and execute and finance various projects which are undertaken by it in view of various provisions under the said Jeevan Authority Act 1976, in our view the controversy can be resolved in view of specific admissions made by the Malegaon Municipal Corporation in their petition. It is no doubt true that it was open for the petitioner in Writ petition no. 1169 of 2002, to challenge the inclusion of their names as acquiring body in various notifications which was issued in the said proceedings, as also in the award which was passed by the district court, however, in view of a fact that Malegaon Municipal Corporation has now filed a group of petitions admitting that they are the acquiring body in respect of the said acquisitions, contention of the petitioner will have to be accepted. Further it is an admitted position that in the year 2003 the Government has issued a notification dated 10th September 2003 in which it is clarified that the Maharashtra Jeevan Pradhikaran would

not be the acquiring body. In the result Writ Petition No. 1169 of 2002 will have to be allowed. Though the petition was filed and interim relief was granted by this Court, the amount which was deposited by the petitioner was disbursed by the Special Land Acquisition Officer in the meantime. Under these circumstances, it is the statutory duty and obligation on the part of the State Government as well as the Malegaon Municipal Corporation for whose benefit the said work was undertaken to refund the said amount to the petitioner authority within the period of 12 weeks. Accordingly, writ petition No.1169 of 2002 is allowed and it is declared that the petitioner authority in the said case was not the acquiring body and acquiring body was Malegaon Municipal Corporation. The impugned directions issued in their letter dated 8.10.2001 by the State of Maharashtra are accordingly, quashed and set aside. Respondents Nos. 1 and 3 are directed to refund the amount of Rs. 6,92,42,000/- to the petitioner authority within a period of 12 weeks. It is clarified that it would be joint and several liability of respondents nos. 1 and 3 to refund the said amount.

9. Writ Petition NO.1169 of 2002 is disposed off accordingly.

10. So far as group of petitions which are filed by Malegaon Municipal Corporation being Writ Petition no.4377/2003, Writ Petition No.5064 of 2003 to Writ Petition No.5070 of 2003 are concerned, it is the contention of Malegaon Municipal Corporation that they were not made party respondents in the Reference and they were not heard by the District Court. Petitioner-Malegaon Municipal Corporation ought to have filed an application in the district court for being impleaded as a party defendant in the said land reference cases, which was pending in district court. however, the petitioners have filed this Writ Petition in this court after the First Appeals against the award passed by District Court was filed by the State Government. Therefore, these Writ Petitions will have to be treated as Civil Applications seeking special leave to file appeals in the First Appeals and thereafter appropriate orders will have to be passed if the petitioners are impleaded as party respondents in the First Appeals which are filed by the State Government. In view of this, the Registry is directed to list these Writ Petition No. 4377/2003, WP 5064/2003 to 5070/2003 as Civil Applications and list them alongwith the First Appeal Nos. 128/2001 to 135/2001.

11. We are fortified in taking out view by the Division Bench of this Court in the case of **Municipal Council,Jalna versus State of Maharashtra and others, reported in 2002(4) Maharashtra Law Journal 737** and held that Writ Petition is not maintainable for challenging land reference award passed by the district court and remedy of the person aggrieved by the award would be to file application either in district court or in First Appeals which is pending in this court.

12. In view of the above Civil Applications filed by he Maharashtra Jeevan Pradhikaran in W.P.No. 4377 of 2003, WP No.5064/2003 to WP No.5070 of 2003 are disposed off accordingly.

13. Group of First Appeals alongwith converted Civil Applications to be placed on board after two weeks.

14. Accordingly the rule is made absolute in WP 1169/2002.

15 Respondents to act on the authenticated copy.

(R.M.S.KHANDEPARKAR,J)

(V.M.KANADE,J)